

DEVELOPMENT SERVICES AGREEMENT

PINE HILL ROAD, BEDFORD MA

This DEVELOPMENT SERVICES AGREEMENT ("Agreement") is made as of the ____ day of _____, 2017 by and among BEDFORD MUNICIPAL AFFORDABLE HOUSING TRUST, a Massachusetts Trust established pursuant to the provisions of M.G.L. Chapter 44 Section 55C ("Sponsor"), and _____, a Massachusetts Limited Liability Company established pursuant to the provisions of M.G.L. Chapter 156C referred to herein as "Developer."

RECITALS

- A. The property known as Pine Hill Road, Bedford, Massachusetts is a property of approximately 5.2 acres of land improved with 15 vacant single-family Bedford houses that shall be developed into ____ units of affordable housing ("Project"), located at Pine Hill Road, Bedford, Massachusetts 01730 ("Property").
- B. The Sponsor has advertised a Request for Proposals ("RFP") requesting proposals from qualified developers for the design, development and construction of the Project.
- C. The Developer submitted a proposal dated _____ which was deemed most advantageous by the Sponsor pursuant to the criteria established by the Sponsor.
- D. The Sponsor and the Developer have executed a Letter of Intent dated _____ indicating their desire to complete the Project, including conveyance of the Property, permitting, and construction.
- E. In connection with its purchase of the Property and construction of the Project, the Developer warrants and represents that it is borrowing certain funds to complete the purchase of the property as evidenced by a letter of interest from _____ dated _____, and attached hereto as Exhibit A.
- F. The Developer intends to seek a permit and construct _____ (__) residential units, form a condominium trust pursuant to M.G.L. c. 183A, sell _____ units on the Property as "Affordable Housing" and enter into a Regulatory Agreement with the Department of Housing and Community Development ("DHCD") which specifies certain uses, restrictions and other requirements in general compliance with the 760 CMR 56.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Services Provided by Developer.** Developer shall provide services ("Development Services") to the Sponsor until the earlier of either the sale of all ____ Project units, or the

construction of the Project is completed, which Development Services are limited to the following:

- a) Developer shall make reasonably diligent efforts to obtain a Zoning Permit for the Project as soon as reasonably practicable in alignment with the Goals as set forth in the Request For Proposal;
- b) Developer shall execute a Regulatory Agreement acceptable to DHCD prior to the issuance of a certificate of occupancy for the first unit of the Project unless otherwise required by MassHousing or DHCD;
- c) Developer shall prepare all documents related to the formation of the proposed condominium association for the Project prior to recording, subject to reasonable review and approval of Sponsor;
- d) Developer shall prepare and submit to the Sponsor such information relating to the Project as the Sponsor may reasonably require;
- e) A Purchase and Sale Agreement shall be executed, upon terms and conditions mutually acceptable to the Sponsor and Developer, which shall include the following contingencies as a precondition to the conveyance of the Property by Sponsor to Developer:
 - (i) *Financing Commitment.* A letter of interest shall have been obtained by Developer from one or more institutional lender(s) or other funding sources (the “Funding Source”), without conditions that cannot readily, or at the time of the Closing be anticipated to, be met, to purchase the Property, and to design, construct and operate the Project (“Project Financing”).
 - (ii) *Plans and Specifications.* The Developer shall deliver and the Sponsor shall be entitled to, at no cost, copies of all plans, specifications, approvals, contracts and other matters developed as part of the Development Services Agreement.
 - (iii) *Construction Schedule.* A Construction Schedule shall be provided to Sponsor which contemplates construction completion within eighteen (18) months after zoning approval.
 - (iv) The deadlines set forth in Section 1(e) above shall be extended for certain defined “Force Majeure” events and otherwise for good cause, all of which shall be described in the Purchase and Sale Agreement.

2. Services Provided by Sponsor. Sponsor shall provide the following services to assist the Developer:

- a) Sponsor agrees to assist the Developer in obtaining a Zoning Permit, either Comprehensive Permit or Special Permit, to develop Affordable Housing as agreed;

- b) Sponsor agrees to release the Developer from the Developer Services Agreement should a Zoning Permit, Comprehensive Permit or Special Permit (as applicable) not be granted despite diligent efforts by the Developer;
 - c) Sponsor agrees to advise the Developer, and to approve plans and material as required in a timely manner, with respect to design and scope of Project;
 - d) Sponsor agrees to advise the Developer regarding compliance of conditions of the Zoning Permit, Comprehensive Permit or Special Permit (as applicable);
 - e) Sponsor agrees to organize consultations with community leaders, neighbors, and with Town, State, and Federal officials in order to construct the Project in accordance with the Zoning Permit, Comprehensive Permit or Special Permit (as applicable);
3. **Level of Service.** Developer shall use reasonably diligent efforts at all times in furnishing or performing such services to promote and advance the best interests of the Sponsor, and that the Project shall be constructed, to the extent practicable, in an economical and efficient manner.
4. **Independent Contractor; Third Party Contractors.** The Developer shall at all times be an independent contractor and not an employee of the Sponsor.
5. **Termination.** This Agreement shall terminate on the date of final completion of the Project, as evidenced by the last affordable unit sold in the Project. This Agreement may be terminated by the Sponsor at any time prior to such final completion for Developer's failure to perform or breach of obligations upon thirty (30) days written notice by Sponsor to Developer, and if Developer fails to cure such failure or breach within ninety (90) days after receipt of said notice (or such lesser time, if Developer states that it does not intend to cure such failure or breach), or such later date as may be reasonably required and agreed upon by the parties for the Developer to cure said default or breach. This Agreement may be terminated by the Developer at any time prior to such final completion due to Sponsor's failure to perform, or breach of obligations, upon thirty (30) days written notice by Developer to Sponsor, and if the Sponsor fails to cure such failure or breach within ninety (90) days after receipt of said notice (or such lesser time, if Developer states that it does not intend to cure such failure or breach), or such later date as may be reasonably required and agreed upon by the parties for the Developer to cure said default or breach. After termination of this Agreement as a result of default of Sponsor, the Sponsor shall remain liable to the Developer only for any portion of the "Development Subsidy" (as defined in Section 6 below) earned by Developer up to the date of the notice of failure to perform or breach of obligations, and upon adequate documentation of costs to that date, including sub-contractor costs.
6. **Development Subsidy.** As compensation for the Development Services, the Sponsor shall pay to Developer a subsidy ("Development Subsidy"), in the amount of _____ (\$_____), unless such additional subsidy has been approved by the Sponsor, which shall be due and payable as follows:
- a) \$_____ upon each Certificate of Occupancy issued for each affordable unit.

7. Miscellaneous.

- a) Nothing herein contained shall be construed to constitute any party as the agent of another party, except as provided herein, or in any manner to limit the parties in the carrying on of their own respective business or activities.
- b) All notices provided for herein shall be in writing and transmitted by registered or certified mail postage prepaid, by prepaid courier delivery, or by telecopier to each party at its address as shown on this Agreement, or as changed by notice given to each party. Each party shall be responsible for notifying the other parties of any changes in its address.
- c) It is the intent of the parties that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the provisions of the laws of the Commonwealth of Massachusetts. This Agreement shall be enforced exclusively in a court of competent jurisdiction located in Middlesex County, Massachusetts.
- d) Sponsor hereby consents to the assignment of this Agreement by the Developer to a related Massachusetts special purpose entity to be created, subject to written notice of same to the Sponsor, for the sole purpose of owning and developing the Property and Project in accordance with the RFP and the Developer's proposal as modified by the Project Approvals and the terms of this Agreement. Otherwise, the Developer shall not have the right to assign, transfer, sublet, convey or otherwise dispose of any contract which results from this Agreement, or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without written consent of the Sponsor. Subject to the foregoing, this Agreement shall be assignable by the Sponsor only with the written consent of the Developer.
- e) This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement shall be binding upon trustees, the heirs, executors, administrators, successors and assigns of the parties hereto. Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party. The undersigned are duly authorized to act on behalf of the respective parties hereto. The Sponsor shall be entitled to its reasonable attorney fees and costs arising out of the enforcement of this Agreement. The parties agree that the Sponsor may seek specific performance, in addition to its remedies at law or in equity, to enforce the Developer's obligations under this Agreement, including the creation of affordable housing.
- f) This Agreement may be amended only by written instrument executed by all the parties hereto.

8. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one

Agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes, without producing or accounting for any other counterpart thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

SPONSOR: BEDFORD MUNICIPAL HOUSING TRUST

Name: Christina Wilgren
Title: Chair

DEVELOPER:

Name:
Title: